

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 1466 – HB 1731

March 23, 2016

**SUMMARY OF ORIGINAL BILL:** Authorizes the Commissioner of the Department of Health (DOH) to license pain management clinics and assess penalties for licensure violations. Establishes annual reporting requirements from the medical director of each pain clinic to include the number of physician assistants and advanced practice nurses who are working in the clinic for each month; the number of pain patients seen by the clinic each month; the number of patients treated who have overdosed; the number of patients being treated for pain that have died during the year; whether the pain clinic is part of or associated with a hospital; and the number of morphine milligram equivalent daily doses per patient per clinic. Creates conditions under which the license may be revoked or suspended. If the deficiency causing the revocation or suspension threatens serious harm to the patients of the clinic, the Commissioner will appoint one or more special monitors to observe the operation of the clinic and periodically submit written reports to the Commissioner on the operations. Establishes that the clinic will be liable for the costs of special monitors, unless the Commissioner retains a monitor in a clinic after correction to evaluate the clinic's continued compliance.

Requires, on or after January 1, 2017, all pain management clinics to obtain a license from the department and to register with the state as a certificate holder. Authorizes DOH to charge a reasonable fee for any application for a license or certificate. Creates a Class A misdemeanor for an entity or person who operates a pain management clinic without a license. Requires the DOH to inspect each clinic prior to issuance of a license and at least one time each year. Requires the Board of Medical Examiners and the Board of Osteopathic Examination to contract with DOH to annually inspect pain management clinics, and to pay for the expenses of the inspections to the DOH out of reserves in the accounts maintained for the boards.

Prohibits an owner or operator of a pain management clinic from locating or participating in locating a pharmacy adjacent to the location of the clinic if the owner or operator has an ownership interest in the location. Requires a medical director to be on-site at least 50 percent, instead of 20 percent, of the clinic's weekly total number of operating hours.

Adds "pain management clinic", as defined under Tenn. Code Ann. § 63-1-301, to the definition of a health care institution and requires a certificate of need (CON) to operate a clinic. Requires the State Health Planning Division to consult with the Bureau of TennCare, the Department of Health, and the Department of Mental Health and Substance Abuse Services to develop appropriate criteria for evaluating an application for a certificate of need for a pain management clinic.

## FISCAL IMPACT OF ORIGINAL BILL:

Increase State Revenue – Exceeds \$970,100/FY16-17  
Exceeds \$929,800/FY17-18 and Subsequent Years

Increase State Expenditures – Exceeds \$970,100/FY16-17  
Exceeds \$929,800/FY17-18 and Subsequent Years

**SUMMARY OF AMENDMENTS (013287, 012788):** Amendment 013287 deletes all language of the original bill. Authorizes the Department of Health (DOH) to conduct an unannounced inspection process that may include a review of business and medical records when the DOH has obtained reasonable suspicion that the office is operating as an unlicensed pain management clinic. Requires the health care provider's office to produce evidence that the majority of its patient population is not receiving chronic non-malignant pain treatment as part of the inspection process. Prohibits any health care provider's office from admitting any new patients to the practice immediately upon receipt of written notice to any provider at the clinic and all owners and providers at such clinic will be subject to a hearing upon 30 days' notice before the licensee's licensing board to consider whether the individual's license to practice should be revoked or otherwise disciplined. Authorizes the Commissioner of Health to promulgate rules providing for an informal advisory administrative hearing by a panel appointed by the Commissioner to review the Department's determination and to provide nonbinding recommendations to the Commissioner concerning those determinations.

Requires, on or after July 1, 2017, all pain management clinics to obtain a license from the DOH. Authorizes the Commissioner to promulgate rules to set fees for licensure, renewal of licensure, late renewal fees, and other fees. Requires all pain management clinics to be inspected prior to being licensed and requires an inspection a minimum of one time every two years. Creates a Class A misdemeanor for operating a pain management clinic without obtaining a license. Authorizes the DOH to require the licensure of a clinic with a certificate holder on the date of the expiration of the certificate. Authorizes a pain management clinic to continue to operate under the certificate holder statute until the certificate expires.

Authorizes the Commissioner to suspend treatment of any new or existing patients to the clinic pending a prompt hearing where the conditions of the pain management clinic are detrimental to the health, safety, or welfare of the patient. In the event of a suspension, the clinic is required to develop a transition plan to maintain continuity of care for the patients and to minimize the impact of transition to alternative care arrangements. If the deficiency causing the revocation or suspension threatens serious harm to the patients of the clinic, the Commissioner may appoint a sufficient number of special monitors to observe the operation of the clinic for a minimum of 20 hours per week and periodically submit written reports to the Commissioner on the operations. Establishes that the clinic will be liable for the costs of special monitors, unless the Commissioner retains a monitor in a clinic after correction to evaluate the clinic's continued compliance.

Requires the medical director of each pain clinic to include in the annual report to the DOH the number of physician assistants and advanced practice nurses who are working in the clinic each month; the number of patients seen by the clinic for each month and the number receiving treatment for chronic nonmalignant pain, whether the pain clinic is part of or associated with a hospital, and any other information requested by the Department.

Authorizes the licensing board to impose an administrative penalty of no less than \$1,000 per day, and no more than \$5,000 per day, on a practitioner who provides pain management services at an unlicensed pain management clinic. Allows the DOH to impose an administrative penalty of no less than \$1,000 per day, and no more than \$5,000 per day, on an owner of an unlicensed pain management clinic. Authorizes the DOH to charge any owner the costs of any inspection or investigation under this part, as well as the costs of prosecution and other costs permitted under Tenn. Code Ann. § 63-1-144.

Prohibits an owner of a pain management clinic, on or after July 1, 2017, from locating or participating in locating a pharmacy adjacent to the location of the clinic, if the owner or operator has an ownership interest in the location.

Amendment 012778 adds language to the bill as amended by amendment 013287 which requires any rule promulgated to implement the provisions of this legislation be provided by the Secretary of State to the Chairs of the Health Committee of the House of Representatives and the Health and Welfare Committee of the Senate, after approval by the Attorney General, and at the same time the text of the rule is made available to the Government Operations Committees of the Senate and the House of Representatives for purposes of conducting the review provided in Tenn. Code Ann. § 4-5-226 and affording the Health Committee of the House of Representatives and the Health and Welfare Committee of the Senate to have the opportunity to comment on the rule.

## **FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:**

**Increase State Revenue – Exceeds \$358,800/FY16-17**  
**Exceeds \$346,100/FY17-18 and Subsequent Years**

**Increase State Expenditures – Exceeds \$358,800/FY16-17**  
**Exceeds \$346,100/FY17-18 and Subsequent**  
**Years**

Assumptions for the bill as amended:

- Based on information provided by the DOH, the increase in annual inspections and inspections prior to licensing cannot be performed within existing resources.
- The Department will require two new Public Health Nursing Consultants (PHNC) to perform the required inspections and one part-time physician to provide oversight and

consultation to determine the appropriateness of pain management practice in a clinic and by the prescribers.

- The one-time increase in state expenditures associated with the additional positions is estimated to be \$12,700 (\$5,900 computer setup + \$6,800 office furniture).
- The recurring increase in state expenditures associated with the PHNC positions is estimated to be \$229,650 [2 positions x (\$66,336 salaries + \$21,589 benefits + \$500 communications + \$600 supplies + \$25,800 travel expenses)].
- The recurring increase in state expenditures associated with the physician position is estimated to be \$108,011 (\$82,464 salary + \$25,247 benefits + \$300 supplies)
- If a deficiency causing the revocation or suspension of a clinic's license threatens serious harm to the patients of the clinic, the Commissioner will appoint one or more special monitors to observe the operation of the clinic and periodically submit written reports to the Commissioner on the operations. It is unknown how many will occur throughout the process to correct any deficiencies. All expenses incurred for continued monitoring during the correction process are to be borne by the facility; therefore, the fiscal impact to the department for such monitoring will not be significant.
- If DOH retains a monitor in a clinic after correction to evaluate the clinic's continued compliance, the department is responsible for any incurred expenses. It is estimated there will be at least three instances a year in which DOH elects to retain a monitor. The recurring increase in state expenditures associated with the cost of such monitors is estimated to be at a minimum \$8,400 (80 hours of monitoring per case x \$35 per hour x 3 cases per year).
- The total increase in state expenditures in FY16-17 is estimated to exceed \$358,761 (\$12,700 + \$229,650 + \$108,011 + \$8,400); in FY17-18 and subsequent years is estimated to exceed \$346,061 (\$229,650 + \$108,011 + \$8,400).
- DOH is authorized to charge a reasonable fee for any application for a license. Based on information provided by DOH, it is estimated that the Department will charge sufficient fees to offset the expenditures incurred to accomplish the requirements of the proposed legislation. As a result, the total increase in state revenue is estimated to exceed \$358,761 in FY16-17 and \$346,061 in FY17-18 and subsequent years.
- There will not be a sufficient number of prosecutions for state or local government to experience any significant increase in revenue or expenditures.
- The Secretary of State and Attorney General can perform any functions specified in amendment 012788 using existing resources.
- Pursuant to Tenn. Code Ann. § 4-29-121, all health related boards are required to be self-supporting over any two year period. The Board of Medical Examiners had a deficit of \$75,431 in FY13-14, a surplus of \$359,446 in FY14-15, and a cumulative reserve balance of \$2,725,411 on June 30, 2015. The Board of Osteopathic Examination had a surplus of \$94,728 in FY13-14, a surplus of \$72,782 in FY14-15, and a cumulative reserve balance of \$614,410 on June 30, 2015.

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in dark ink that reads "Krista M. Lee". The signature is written in a cursive, flowing style.

Krista M. Lee, Executive Director

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